

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL ANTHONY ABELS,

Petitioner,

v.

PAT GLEBE,

Respondent.

CASE NO. C09-1720 RSM

ORDER DENYING MOTION FOR
CERTIFICATE OF
APPEALABILITY

This matter comes before the Court on Petitioner's motion for a certificate of appealability ("COA") (Dkt. #28). This Court previously adopted Magistrate Judge Donohue's Report and Recommendation dismissing Petitioner's petition as time-barred. (*See* Dkt. #s 17, 26).

Under 28 U.S.C. §2253, a petitioner is entitled to a COA where he has made "a substantial showing of the denial of a constitutional right." Petitioner must "show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (*quoting*

1 *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). “A prisoner seeking a COA must prove
2 something more than the absence of frivolity or the existence of mere good faith on his or her
3 part.” *Miller-El*, 537 U.S. at 338 (internal quotations omitted). However, a petitioner need not
4 prove that some jurists would grant the petition, as a claim may be debatable “even though
5 every jurist of reason might agree, after the COA has been granted and the case has received
6 full consideration, that petitioner will not prevail.” *Id.*

7 Where, as here, the petition is dismissed on procedural grounds, “a COA should issue
8 when the prisoner shows, at least, that jurists of reason would find it debatable whether the
9 petition states a valid claim of the denial of a constitutional right and that jurists of reason
10 would find it debatable whether the district court was correct in its procedural ruling.” *Slack v.*
11 *McDaniel*, 529 U.S. 473, 484 (2000). “Where a plain procedural bar is present and the district
12 court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either
13 that the district court erred in dismissing the petition or that the petitioner should be allowed to
14 proceed further.” *Id.*

15 Petitioner’s claims are plainly time-barred. (See Report and Recommendation, Dkt.
16 #17). Under the prevailing standard, petitioner is not entitled to a COA. The motion is
17 DENIED.

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19 Dated September 13, 2010.

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22 RICARDO S. MARTINEZ
23 UNITED STATES DISTRICT JUDGE
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